

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ROSA GRAJEDA AND JOSE GRAJEDA, §
Plaintiffs §
§
v. § **CIVIL ACTION NO. 3:17-CV-00338**
§
LIBERTY MUTUAL INSURANCE COMPANY §
AND KIMBERLY FIRSZT, §
Defendants §

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332 and 1441(a) (DIVERSITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Liberty Mutual Insurance Company (“Liberty”) and Kimberly Firszt, hereby petition this Court pursuant to 28 U.S.C. §§ 1332 and 1446 for removal, on the basis of diversity jurisdiction, to the United States District Court for the Western District of Texas, El Paso Division, of the action styled Rosa Grajeda and Jose Grajeda v. Liberty Mutual Insurance Company and Kimberly Firszt, Cause No. 2017-DCV-3070, currently pending in the 243rd Judicial District Court of El Paso County, Texas (the “State Court case”) and in support thereof would respectfully show this Court as follows:

I.
FACTS

1. Plaintiffs filed suit in the State Court Case on August 31, 2017, as the result of disputes regarding a claim made under their homeowners’ insurance policy. Plaintiffs allege that Liberty “failed to perform its contractual duties to adequately compensate Plaintiffs under the terms of the Policy.” Plaintiffs’ Original Petition (the “Petition”) at ¶ 14. Plaintiffs also allege that Liberty and Kimberly Firszt jointly “failed to make an attempt to settle Plaintiffs’ claim in a fair manner, although they were aware of their liability to Plaintiffs under the Policy.” Petition at

¶ 16. Plaintiffs' causes of action against Kimberly Firszt include alleged noncompliance with the Texas Insurance Code and common law fraud. Petition at ¶ 27-36. Plaintiffs' causes of action against Liberty include alleged noncompliance with the Texas Insurance Code, breach of contract, breach of the common law duty of good faith and fair dealing, and common law fraud. Petition at ¶ 37-54. Plaintiffs seek not only their actual damages and exemplary damages, but also damages to regain the benefit of their bargain and to compensate for their mental anguish and emotional distress. For alleged noncompliance with the Texas Insurance Code, Plaintiffs ask for the amount of their claim, three times their actual damages, and (18) percent interest per annum of the amount of their claim, together with attorney's fees. Liberty and Kimberly Firszt deny that Plaintiffs are entitled to these benefits or damages.

2. Defendants Liberty and Kimberly Firszt were served with Plaintiffs' Original Petition and Requests for Disclosure on October 11, 2017. Liberty and Kimberly Firszt filed their Original Answer, Special Exceptions, and Liberty Mutual Insurance Company's Verified Denial on November 3, 2017. A true and correct copy of all pleadings, process, orders, and correspondence served in this action is attached hereto as Exhibit "A" and incorporated herein by reference.

3. Liberty Mutual Insurance Company¹ is an insurance company incorporated in the State of Massachusetts with its home office and principal place of business in Boston, Massachusetts. Liberty Mutual Insurance Corporation is a citizen of the State of Massachusetts and not the State of Texas. Defendant Kimberly Firszt is a citizen of the State of Indiana and not

¹In its State Court Answer, Liberty Mutual Insurance Company pled that it is not the proper party to this because it did not issue the relevant insurance policy to Plaintiffs in this case. The insurance policy at issue in this lawsuit was issued by Liberty Insurance Corporation. Liberty Insurance Corporation is an insurance company incorporated in the State of Illinois with its home office and principal place of business at Boston, Massachusetts. Liberty Insurance

the State of Texas.

4. Plaintiff has made a jury demand in the State Court case.
5. This action is a civil action which may be removed to this Court by Defendants Liberty and Kimberly Firszt pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1332(a) in that it is between citizens of different states; it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs; and Liberty and Kimberly Firszt are not citizens of the State of Texas.

III.
PROCEDURAL REQUIREMENTS

6. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

7. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the clerk of the 243rd District Court of El Paso, Texas promptly after the filing of this Notice.

8. Attached hereto and incorporated herein, are the following items:

Exhibit A: A true and correct copy of all pleadings, process, and orders served in this action.

Exhibit B: State Court docket sheet.

Exhibit C: List of all counsel of record.

Exhibit D: Index of all documents filed with the Court.

WHEREFORE, PREMISES CONSIDERED, Defendants Liberty Mutual Insurance Company and Kimberly Firszt request that this action be removed from the 243rd Judicial District

Corporation is a citizen of the State of Massachusetts and not the State of Texas. Accordingly, there is complete diversity of citizenship between Liberty Insurance Corporation and Plaintiff as well.

Court of El Paso County, Texas to the United States District Court for the Western District of Texas, El Paso Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

HANNA & PLAUT, L.L.P.
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By: /s/ Catherine L. Hanna

Catherine L. Hanna
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**ATTORNEYS FOR DEFENDANTS LIBERTY
MUTUAL INSURANCE COMPANY AND
KIMBERLY FIRSZT**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded via e-service and/or facsimile on this the 10th day of November 2017 to:

Via Facsimile: (915) 613-4284

Omar Maynez
THE GUARDIOLA LAW FIRM, PC
1812 Hunter Drive
El Paso, Texas 79915
ATTORNEYS FOR PLAINTIFF

/s/ Catherine L. Hanna

Catherine L. Hanna